DEC 30 1999

No. 99-137

Supreme Court, U.S.
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In The

Supreme Court of the United States

J. WAYNE GARNER, former Chairman of the State Board of Pardons and Paroles of the State of Georgia, JAMES T. MORRIS, former Chairman of the State Board of Pardons and Paroles of the State of Georgia, GARFIELD HAMMONDS, JR., former Chairman of the State Board of Pardons and Paroles of the State of Georgia, BOBBY K. WHITWORTH, Member of the State Board of Pardons and Paroles of the State of Georgia, and TIMOTHY E. JONES, former Member of the State Board of Pardons and Paroles of the State of Georgia,

Petitioners,

v.

ROBERT L. JONES,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF OF PETITIONERS

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CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED IN THE CASE

U.S. Const. Art. I, § 10:

No State shall . . . pass any . . . ex post facto Law. . . .

Ga. Comp. R. & Regs. r. 475-3-.05(2)

(*effective December 1, 1979*) (*now superceded*):

Reconsideration of those inmates who have been denied parole shall take place at least every three years. The Board will inform inmates denied parole of the reasons for such denial without disclosing confidential sources of information or possibly discouraging diagnostic opinions. (Text set out fully at J.A. 86-87).

Ga. Comp. R. & Regs. r. 475-3-.05(2)

(*effective September 12, 1993*) (*Presently in effect*):

Reconsideration of those inmates who have been denied parole shall take place at least every eight years. The Board will inform inmates denied parole of the reasons for such denial without disclosing confidential sources of information or possibly discouraging diagnostic opinions. (Text set out fully at J.A. 88-90).

ARGUMENT

I. THE CHALLENGED PROVISION MERELY ALTERS THE MANDATORY PERIODIC PAROLE RECONSIDERATION OF LIFE-SENTENCED INMATES WHO HAVE ALREADY BEEN DENIED PAROLE AND AFFECTS NEITHER PAROLE ELIGIBILITY NOR INITIAL PAROLE CONSIDERATION.

In Georgia's parole scheme, inmates serving sentences of either a term of years or life imprisonment attain eligibility for parole, if at all, by operation of law after the service of a designated portion of their sentence. In the case of Respondent, the period of time served prior to parole eligibility was seven years.

A. Affected Inmates Never Lose Parole Eligibility.

The arguments advanced by Respondent, and the decisions of the Eleventh Circuit in the case *sub judice*, and in *Akins v. Snow*, 922 F.2d 1558 (11th Cir.), *cert. denied*, 501 U.S. 1260 (1991), are premised upon the notion that life-sentenced inmates, after attaining parole eligibility pursuant to law, lose that eligibility during the term of their "set-off" between periodic mandatory parole reconsiderations. This premise is erroneous.[1]

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[1] Petitioner has lodged with the Clerk of this Court certain documents obtained pursuant to the Georgia Open Records Act, Ga. Code Ann. § 50-18-70, *et seq*. These documents are lodged in response to the inclusion of statistics and other materials *dehors* the record by Respondent and his *amici*, so that this Court might have an accurate indication of the operation of Georgia's parole system. Document Number One of those lodged documents, which is annexed to this brief as Appendix One, lists anecdotal examples of ten life-sentenced inmates from Georgia's prison system whose parole was reconsidered by the State Board of Pardons and Paroles ("the Board") exceptionally in advance of their previously-established reconsideration set-off date. The information concerning the ten inmates chronicled therein, five of whom were actually released from confinement, plainly demonstrates that the opportunity for early reconsideration represents no mere unrealistic "potential" for review, as Respondents and the Circuit Court have maintained. Far from being a circumstance in which "a prisoner who experiences a drastic change in circumstances [being] precluded from seeking an expedited hearing from the Board," the Board's authority to review inmates eligible for parole at any time is a vital, and demonstrable, part of the Board's practice. *See California Department of Corrections v. Morales*, 514 U.S. 499, 512 (1995).

What has been described by Respondent and his *amici* as an "eight-year rule" involves no such inflexibility. In the application of the rule at issue in this case, it is only the periodic mandatory reconsideration event that is being delayed, not eligibility for parole.

The Board's determination of parole, and if denied its decision as to the length of an inmate's set-off period, are individualized determinations by the Board based wholly on the facts and circumstances peculiar to that inmate.[2] Thus the Board's application of the challenged regulation is unique to each inmate it considers. Therefore, the notion of an "eight-year rule" is fallacious.

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[2] Document Two lodged with the Clerk of this Court, and annexed hereto as Appendix Two, is a graphic representation of this fact. Clearly, as more than thirty percent of life-sentenced inmates denied parole in fiscal year 1999 were set off for less than eight years (not including those 90 life-sentenced inmates to whom parole was granted), the Board's rule is manifestly being applied precisely as the record below demonstrated that it was. J.A. 49-50.

The inquiry of the Board is, again, based upon an individualized examination of a particular inmate's crimes, conduct, and future prospects (among other things) which is then expressed in an individualized determination as to how long *mandatory* reconsideration should be set-off. This is so because the rule and the implementing and explanatory policy statement are merely further manifestations of the Board's discretion over this life-sentenced inmate. This rule in no way, as Respondent intimates, limits the Board's discretion or ability to parole any inmate.

Respondent would have this Court believe that the Board somehow makes certain inmates "ineligible" for parole by setting-off their mandatory reconsideration for a determinant period. Such an assertion is counter-intuitive. As noted above, eligibility for parole is set in Georgia *not by the Board*, but by the Georgia Constitution and Georgia statutes. *See, e.g.*, Ga. Code Ann. §§ 42-9-45, 17-10-6.1, 17-10-7, Ga. Const. Art. IV, § 2, ¶ 2. *See also Freeman v. State*, 264 Ga. 27, 440 S.E.2d 181 (1994); *Vargas v. Morris*, 266 Ga. 141, 465 S.E.2d 275, *cert. denied sub nom. Vargas v. Garner*, 517 U.S. 1108 (1996); *Moore v. Ray*, 269 Ga. 457, 499 S.E.2d 636 (1998). It is not within the power of the Board, under Georgia law, to remove such eligibility once conferred. Rather, the Board has constitutional and statutory discretion to parole, or deny parole to, *any inmate within its jurisdiction*.

Respondent's argument regarding this alleged ineligibility for parole is premised upon the fallacy that inmates affected by this rule are "fence[d] out" of or "hermetically seal[ed] off" from parole reconsideration. Such assertions are patently erroneous.

In fact, as noted above, the Board always retains the authority to parole any inmate within its jurisdiction regardless of the existence of the Board policy derided by Respondent and the Eleventh Circuit. Thus, the Board's policies and rules provide for regularly scheduled parole reconsiderations *and* for "expedited parole reviews in the event of a change in [the inmate's] circumstance or where the Board receives new information that would warrant a sooner review." J.A. 56.

Those statements of policy merely attempt to describe the process by which the Board will exercise its discretion to parole or not parole an inmate. The Board has in no way limited its own discretion over this ultimate decision. In fact, this rule change enhanced the Board's discretion by allowing it, as noted previously in Petitioner's initial brief before this Court, to focus its limited resources and time upon those inmates who do, in the Board's analysis, have some near-term likelihood for parole.

The challenged rule is not a static measure by which all inmates are judged unyieldingly. Instead, it is a vital instrument of the Board's discretion, used in conjunction with the Board's determination of whether to parole. The set-off is precisely what the Board determines it to be as to each particular inmate, whether it be one year, three years, or (as with Respondent) eight years, depending upon the Board's individualized assessment of that inmate's circumstances.

For Respondent (a double-murderer and previous escapee), the present regulation *is*, without doubt, an "eight-year rule." What this demonstrates, however, is

merely that the rule in no way limits the Board's ability to make the individual decision in any single inmate's case to parole or not parole.

B. Respondent Bears the Burden of Proof.

Respondent herein urges this Court to avert its gaze from the effect of the rule upon him, and rather review its effect upon all similarly-situated inmates. This argument begs the question, however, of how this rule can be examined without application. Respondent's argument rings hollow in light of this Court's admonition in *Morales*, quoted incompletely by Respondent, that "[a]lthough we have held that a party asserting an ex post facto claim need not carry the burden of showing that he would have been sentenced to a lesser term under the previous statutory scheme, . . . we have *never* suggested that the challenging party may escape the ultimate burden of establishing that the measure of punishment itself has changed [emphasis added]." *Id.*, 514 U.S. at 510, n.6.

Thus, contrary to Respondent's urging, he may not merely invoke the words "ex post facto" as though reciting some incantation, and thereby be relieved of any burden of persuasion. This, too, was the error of the Circuit Court below, in that it erroneously shifted the burden of proof to Petitioner. *See, e.g., Jones v. Garner*, 164 F.3d at 595-96. To do as Respondent suggests, and as the Circuit Court did, effectively "eviscerate[s] the view of the Ex Post Facto Clause that [the Court] reaffirmed in Collins [*v. Youngblood*, 497 U.S. 37 (1990)]." *Morales*, 514 U.S. at 510, n.6.

Respondent's complaints that his heinous crimes should be removed from consideration, while predictable, fail to reckon with the reality that it is the facts of these very crimes which the Board must consider in deciding whether Respondent ever leaves incarceration as a parolee. J.A. 52-4. How, then, can this Court or any other do as Respondent wishes?

II. THE AUTONOMY AND DISCRETION OF GEORGIA'S PAROLE BOARD ARE VITAL FACTORS IN THIS COURT'S DETERMINATION OF THE ISSUES AT BAR.

Respondent contends that the question of whether there exists a reasonable expectation of parole is inappropriate, and is belied by "real-world conditions." Resp. Br. at 4. Respondent's attempts to substitute "real-world conditions" for the law are without merit. Since Respondent is fully aware that there exists no lawful basis upon which any life-sentenced inmate can *ever legitimately expect* to be paroled, he attempts to substitute so called "real-world conditions" for any legitimate expectation of parole.

Ultimately, however, the length of time actually served prior to being paroled by any single inmate, or artificial grouping of inmates, is irrelevant. The law requires, and the Board conducts, individualized determinations of parole suitability for each inmate based upon his or her criminal history, institutional conduct, and a variety of other factors. *See, e.g.*, Ga. Code Ann. § 42-9-42. Respondent's attempts to use some amalgamation of these individual decisions to create what amounts

to a fictionalized "real-world" is wholly unsupported by the law, and can provide no basis for relief.

It is the individual determination of a particular inmate's parole suitability which leads to a decision as to whether that inmate is to be paroled. Likewise, it is the individualized determination of a particular inmate's circumstances which lead, if that inmate is denied parole, to a decision by the Board as to how long that inmate's reconsideration is to be set-off. Thus, whatever hope Respondent or any other life-sentenced inmate has that they will be paroled is merely that: hope. It is not based in law.

As Petitioner has noted previously, Georgia's Board of Pardons and Paroles is the sole seat of all executive clemency powers in the State. Ga. Const., Art. IV, § 2, ¶ 2. Any attempt by the General Assembly to limit the discretion of the Board to parole inmates within its jurisdiction would violate the separation of powers provisions of Georgia's constitution. *Id. See also* Ga. Code Ann. § 42-9-1.

Moreover, the Eleventh Circuit has previously, on two occasions, reviewed Georgia's parole system and has found, *as a matter of fact*, that the "substantial discretion [inherent in Georgia's parole system] belies any claim to a reasonable expectation of parole." *Sultenfuss v. Snow*, 35 F.3d 1494, 1502 (11th Cir.), *cert. denied*, 513 U.S. 1191 (1995). Similarly, in *Jones v. Georgia State Board of Pardons and Paroles*, 59 F.3d 1145 (11th Cir. 1995) the Eleventh Circuit again described the "virtually unfettered discretion" exercised by the Board. *Id.* at 1150. Similarly, Georgia's own courts have consistently upheld the discretionary nature of Georgia's parole system. *See, e.g., Vargas*

v. Morris, 266 Ga. 141, 465 S.E.2d 275 (1996); *Lewis v. Griffin*, 258 Ga. 887, 376 S.E.2d 364 (1989).

Respondent attempts to bolster his claim of a "real-world" expectation of parole by reliance upon this Court's decision in *Solem v. Helm*, 463 U.S. 277 (1983). Justice Powell's description therein of parole as the "normal expectation in the vast majority of cases" is inapposite to the case at bar as the system from which that "expectation" comes "details the standards and procedures applicable" to parole consideration. *Id.*, at 300. Further, the Court's description relies in part upon *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1 (1979), which involved a parole system found to create an expectation of parole.

By contrast, Georgia's parole scheme is akin to the Court's description of commutation as "an ad hoc exercise of executive clemency [wherein a] governor [in that case] may commute a sentence at any time for any reason, without reference to any standards." *Solem*, 463 U.S. at 301. As noted herein above and in Petitioner's initial brief before this Court, this description is particularly apt given the constitutional and statutory foundation for Georgia's parole scheme, as well as the descriptions given it by numerous reviewing courts. Thus, it is apparent that Respondent's description of a "real world" expectation of parole is both factually and legally without merit.

Respondent claims that the autonomy of the Board and the fact that the law is devoid of any basis for his expectation for parole do not matter, as these concerns are not relevant to ex post facto considerations. The language which Respondent has quoted from this Court's

decision in *Weaver v. Graham*, 450 U.S. 24 (1981), is inapposite, however, as this Court was there dispelling the notion, advanced by the Florida Supreme Court, that "gain time allowance is an act of grace rather than a vested right and may be withdrawn, modified or denied." *Harris v. Wainwright*, 376 S.E.2d 855, 856 (1979).

The change at issue in that case demonstrably lengthened the inmates' sentences requiring them to "earn" *days off their sentences*, rather than receiving them automatically as they had done previously. *Weaver*, 450 U.S. 30, n.13. Thus, although the "right" to gain time in *Weaver* was not "vested" because it could be taken away, the change in the law therein challenged was violative of the Ex Post Facto Clause because it required inmates to earn actual time off their sentences which they previously could have kept merely by not misbehaving. *Id.*

Here, by contrast, the change is merely one of how frequently the Board must engage in a mandatory reconsideration of an inmate's parole, based upon the individualized determination by the Board as to a particular inmate's near-term likelihood for parole. Not only does Respondent not have a right to parole, he does not have a reasonable expectation of parole based upon either the law or "real-world" experience. Thus, this criticism is wholly inapposite.

Ultimately, this Court's ex post facto analysis in this case must focus upon how, if at all, an inmate's sentence is lengthened. Here, the inmate's *mandatory* parole reconsideration schedule has gone from three years to eight years, but that "extension" is the result of an individualized determination of *that inmate's* circumstances made

by the body which has the ultimate decision-making power over whether that inmate is ever released from prison. That inquiry must inexorably lead to the logical conclusion that any notion that the sentence is measurably lengthened is based not upon fact but upon "mere speculation." Thus, there can be no ex post facto violation here.

Obviously, there can be no principled argument that the Board can be prohibited from applying the amended rule prospectively to those inmates whose crimes were committed subsequent to its promulgation. However, under Respondent's theory, in order to apply this rule retrospectively and comply with the fact-bound application of this Court's decision in *Morales* advanced by Respondent and utilized by the circuit court, Georgia's parole board must effectively divest itself of large portions of its constitutionally and statutorily-vested discretion and autonomy.

Thus, Respondent would apparently have the Board afford an inmate more "procedural safeguards" at a parole *reconsideration proceeding* than that required at an initial parole consideration proceeding in order to comply with their fact-bound *Morales* analysis. Clearly, this argument is counterintuitive.

III. THIS COURT'S DECISION IN *MORALES* DEMONSTRATES THAT THE APPLICATION OF THE CHALLENGED REGULATION TO RESPONDENT HEREIN DOES NOT VIOLATE THE EX POST FACTO CLAUSE.

While Respondent urges this Court to effectively limit its decision in *Morales* to its facts based, *inter alia*, upon such nebulous notions as "Constitutional policy" reasons, it is only the Circuit Court below which has adopted such a fact-bound interpretation of this Court's precedents.[3] Although Respondent nominally seeks application of the *Morales* test to the case at bar, it is merely the erroneous fact-bound rote comparison of Georgia's law to that of California which Respondent seeks.

Initially, Respondent complains that the "duration of tolerated delay is fundamentally different" between the two systems. Resp. Br. at 26. Respondent and the Circuit Court below "warn" that "much could happen" during that interval. Resp. Br. at 27, quoting *Jones*, 164 F.3d at 595. While this is true, it is equally true of any interval between mandatory reconsiderations. Thus, the Board's authority, based in law, recognized in policy, and carried out in practice, is brought to bear to consider early those

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[3] *See, e.g., Hill v. Jackson*, 64 F.3d 163 (4th Cir. 1995); *Roller v. Gunn*, 107 F.3d 227 (4th Cir.), *cert. denied*, 522 U.S. 874 (1997); *Shabazz v. Gabry*, 123 F.3d 909 (6th Cir.), *cert. denied*, 522 U.S. 1019 (1997); *Furnari v. Savaras*, 914 P.2d 508 (Colo. 1996); *Tuff v. State*, 732 So. 2d 461 (Fla. 1990); *Fletcher v. Williams*, 179 Ill. 2d 225 (1997); *Jordan v. Tennessee Board of Paroles*, 1997 Tenn. App. LEXIS 27.

inmates who have experienced a "change in their circumstances or where the Board receives new information that would warrant a sooner review." J.A. 56. *See also* Appendix One.

Interestingly, while Respondent readily acknowledges the "obvious reasons for not applying the ex post facto clause to" "such innocuous adjustments as changes in the membership of the Board . . . (Resp. Br. at 41, 42, quoting *Morales*, 514 U.S. at 508)," Respondent nonetheless feels free to argue that an important reason for requiring earlier mandatory reconsideration is "the continuous membership changes of the parole board." Resp. Br. at 22; *see also* Resp. Br. at 23, n.14.

Respondent's argument herein is based, as was the Circuit Court's erroneous holding below, upon the fallacious assumption that more frequent *mandatory* parole reconsideration leads to an earlier release date. Such a premise has been rejected elsewhere,[4] and is at best questionable based upon this Court's statement in *Morales* that "[t]he amendment has no effect on the date of any prisoner's initial parole suitability hearing; it affects the timing only of the subsequent hearings." *Id.* at 511. Respondent's assumption cannot be proven, and is thus based solely upon "the most speculative and attenuated possibility of producing the prohibited effect of increasing the measure of punishment." *Id.* at 509.

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[4] "There exists no legal nexus between the decrease of regularly scheduled parole hearings and eligibility for parole." *Shabazz v. Gabry*, 123 F.3d 909, 914 (6th Cir.), *cert. denied*, 522 U.S. 1019 (1997).

Respondent next complains that the class of inmates to whom Georgia's rule applies is too broad. Resp. Br. at 27. Aside from the fact that this notion is contradicted directly by the record evidence below,[5] the distinction Respondent attempts to draw is without merit. As made plain both herein above and in Petitioner's initial brief before this Court, Georgia's life-sentenced inmates have no legitimate claim to an expectation of parole.

Moreover, as shown above, the application of the reconsideration set-off rule is clearly based upon the Board's individualized determination of the inmate's near-term likelihood for parole by the body with the ultimate decision-making power. The fact that the Georgia General Assembly has acted aggressively to protect the citizens of this State by authorizing life sentences to be imposed upon perpetrators (or repeat perpetrators) of serious felony offenses, all but one of which necessarily include either violence or the threat of violence, is wholly inapposite to this inquiry.

Respondent next argues that because Georgia does not have an elaborate procedural matrix through which these decisions must pass, there are inadequate "procedural safeguards" to ensure against "unjustified postponements." Resp. Br. at 30. Again, Respondent misses the point that it is the Board alone that determines whether he or any life-sentenced inmate will ever be released. Apparently, Respondent would read this Court's decision in *Morales* to require parole boards

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[5] J.A. 49-50.

vested with broad autonomy and discretion (as is Georgia's) to yield significant portions of that autonomy and discretion to other governmental entities merely so that it can have the discretion to extend the term of the mandatory reconsideration set-off for inmates which it alone decides will ever be released from prison. Such an argument is counterintuitive and without merit.

Also, Respondent's arguments consistently ignore the existence of the Board's authority, demonstrated herein above, to reconsider any inmate within its jurisdiction for parole at any time. Such authority, based upon the broad constitutional and statutory powers of the Board, is manifested by the Board's policy statement, as well as its own practices. *See, e.g.*, J.A. 49-50; Appendices One, Two.

Finally, Respondent would have this Court believe that the change in Georgia's mandatory parole reconsideration cap is not intended to reduce the Board's administrative burden. This argument strains credulity, as any knowledgeable observer of prison litigation understands that the burgeoning prison populations are creating new imperatives nation-wide that corrections-related entities focus their limited resources where they can be most effective. What would Respondent have this Court believe that the intent of such rule changes are, if not to allow them to focus upon those inmates with realistic near-term prospects for parole? Common sense dictates that this argument is without merit.[6]

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[6] See also Appendix Two, demonstrating that the Board annually reviews approximately ten percent of the more than 5,500 parole-eligible life-sentenced inmates.

The application of the change in Georgia's mandatory parole reconsideration interval to Respondent does not violate the Constitutional prohibition against ex post facto laws. Rather, this change, as shown above and previously by Petitioner, creates only the "most speculative and attenuated possibility" of increasing Respondent's sentence. Respondent's arguments to the contrary, premised as they are upon fallacy and supposition, are without merit.

CONCLUSION

WHEREFORE, for all the above and foregoing reasons, Petitioner prays that this Honorable Court reverse the decision of the Court of Appeals for the Eleventh Circuit and direct that judgment in this matter be entered in favor of Petitioner.

Respectfully submitted,

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APPENDIX 1

STATE OF GEORGIA

COUNTY OF FULTON

CERTIFICATE

Before me, the undersigned officer authorized to administer oaths in and for the State of Georgia, appeared TRACY D. MASTERS, who, having first been duly sworn, did depose and state on his oath the following, I, TRACY D. MASTERS, am employed as the Director of Legal Services for the State Board of Pardons and Paroles. The Legal Services section is the official custodian of all documents, records, and tapes possessed by the State Board of Pardons and Paroles at its Atlanta headquarters. I further certify that the attached documents represent true and accurate abstractions of Parole Board records related to life-sentenced offenders. Said abstractions of Parole Board records were compiled and released pursuant to the Georgia Open Records Act, O.C.G.A. 50-18-70.

/s/ Tracy D. Masters
Tracy D. Masters
Director of Legal Services
State Board of Pardons and Paroles

Sworn to and subscribed before me
upon this 21st day of December, 1999.

/s/ Debbie Carver
Notary Public
My commission expires:

Notary Public, Spalding County, Georgia
My Commission Expires April 25, 2003

STATE BOARD OF PARDONS AND PAROLES

[Names And Addresses Omitted In Printing]

December 21, 1999

MEMORANDUM

TO: Chris Brasher
Senior Assistant Attorney General

FROM: MPS Michael P. Sullivan, Division Director
Clemency and Parole Selection

RE: Exceptional Reconsiderations of Life Sentenced Inmates FY'99

I have summarized some cases that were reviewed by the Board during FY'99 that were not scheduled for normal reconsideration during that time. The attached list is not exhaustive, but contains certain cases which I or my staff recalled exceptional reconsideration occurring between 07/01/98 and 06/30/99.

MPS/ks

Attachment

SAMPLE OF EXCEPTIONAL CONSIDERATIONS OF LIFE SENTENCE INMATES DURING FY'99

David Mercer Stubbs, EF-280561

- Offense: Kidnapping with Bodily Injury
- Date Sentenced: 06/03/91
- Initial Consideration: March 1998
- Reconsideration Date: March 2006
- Exceptional Reconsideration Date: March 1999
- Status: Granted Parole after serving 8 years

Rose Lee Blalock, EF-154233

- Offenses: Murder and Armed Robbery
- Date Sentenced: 12/18/81 (2 counts concurrent)
- Initial Consideration: December 1987
- Considered/Denied Parole 5 times; upon last scheduled reconsideration by Board during December 1997, a reconsideration date of December 2000 was established
- Exceptional Reconsideration Date: April 1999
- Status: Granted Parole After Serving 18 years, 4 months

Gary Bernard Newberry, EF-247546

- Offense: Murder
- Date Sentenced: 09/27/89
- Initial Consideration: January 1996
- Reconsideration Date: January 2004
- Exceptional Reconsideration Date: July 1999 (under consideration since 02/99)
- Status: Parole Granted after serving 10 years, 6 months

Donald Eugene Morgan, EF-181048

- Offense: Murder
- Date Sentenced: 05/16/85
- Initial Consideration: October 1991
- Reconsideration Date: October 2005
- Exceptional Reconsideration Date: April 1999
- Status: Granted Conditional Reprieve after serving 14 years, 6 months

Janie H. Gibbs, A-79018

- Offense: Murder
- Date Sentenced: 05/08/76 (5 counts, consecutive)
- Initial Consideration: September 1979
- Reconsideration Date: December 2003
- Exceptional Reconsideration Date: March 1999
- Status: Granted Conditional Reprieve after serving 31 years (Was denied clemency on 17 separate considerations)

Larry Dover, EF-153876

- Offense: Murder
- Date Sentenced: 09/03/81
- Initial Consideration: December 1987
- Reconsideration Date: October 2002
- Exceptional Reconsideration Date: February 1999
- Status: Denied Conditional Reprieve, had served 18 years, 2 months (had been considered 5 times previously)

Luther Glenn Lundy, A-65212

- Offense: Murder
- Date Sentenced: 09/26/66
- Status: Paroled April 1981
- Status: Parole Revoked June 1981
- New Offense: Voluntary Manslaughter
- Date Sentenced: September 1981: 18 years concurrent to Life sentence
- Initial Consideration: July 1984 (After Revocation)
- Reconsideration Date: November 2003
- Exceptional Reconsideration Date: May 1999
- Status: Denied Conditional Reprieve, had served 17 years, 11 months (had been considered and denied 7 times since parole revocation and new homicide while on parole)

Annie Jewell Willis, EF-236210

- Offense: Murder and Aggravated Assault
- Date Sentenced: 03/01/89 (Life and 20 years concurrent, respectively)
- Initial Consideration: May 1995
- Reconsideration Date: May 2003
- Exceptional Reconsideration Date: April 1999
- Status: Denied Conditional Reprieve (had served 10 years, 11 months)

J.B. Cooper, A-26034

- Offense: Murder
- Date Sentenced: 01/22/51 (Escaped 11/26/51, not recaptured until he was sentenced on 10/23/80 to 20 years, serve 18 years for the crime of Voluntary Manslaughter)
- Initial Consideration: February 1987
- Reconsideration Date: November 2003
- Exceptional Reconsideration Date: May 1999
- Status: Denied Conditional Reprieve (Allowing for his 29 years, 1 month, 4 days on escape, had served 19 years, 3 months)

Charles V. Parker, EF-194901

- Offense: Murder
- Date Sentenced: 06/04/85
- Initial Consideration: January 1992
- Reconsideration Date: January 2005
- Exceptional Reconsideration Date: February 1999 and September 1999
- Status: Denied Conditional Reprieve on both occasions (had served 14 years, 8 months. Has been considered and denied for parole 3 times previously

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APPENDIX 2

STATE OF GEORGIA

COUNTY OF FULTON

CERTIFICATE

Before me, the undersigned officer authorized to administer oaths in and for the State of Georgia, appeared TRACY D. MASTERS, who, having first been duly sworn, did depose and state on his oath the following, I, TRACY D. MASTERS, am employed as the Director of Legal Services for the State Board of Pardons and Paroles. The Legal Services section is the official custodian of all documents, records, and tapes possessed by the State Board of Pardons and Paroles at its Atlanta headquarters. I further certify that the attached document represent a true and accurate abstraction of Parole Board records related to life-sentenced offenders for Parole Board actions from July 1, 1998 until June 30, 1999. Said abstraction of Parole Board records was compiled and released pursuant to the Georgia Open Records Act, O.C.G.A. 50-18-70.

/s/ Tracy D. Masters
Tracy D. Masters
Director of Legal Services
State Board of Pardons
and Paroles

Sworn to and subscribed before me
upon this 23rd day of December, 1999.

/s/ Debbie Carver
Notary Public
My commission expires:

Notary Public, Spalding County, Georgia
My Commission Expires April 25, 2003

Reconsideration set-off periods for
life-sentenced inmates denied parole in FY'99

[Graph Omitted In Printing]

Number of cases set-off

Board established reconsideration intervals

1 year – 38 cases
2 years – 24 cases
3 years – 44 cases
4 years – 15 cases
5 years – 20 cases
6 years – 13 cases
7 years – 8 cases
8 years – 372 cases

30.3% of all denials set for reconsideration at < 8 years

Total # of life cases considered for parole in FY'99	624
Total # of life cases denied parole in FY'99	534
Total # of life cases granted parole in FY'99	90
Total # of parole eligible life cases end of FY'99	5,684